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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,683	12/28/2005	Johanan Hershtik	P08812US00/RFH	4057
881	7590	07/08/2008	EXAMINER	
STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			STOCK JR, GORDON J	
		ART UNIT	PAPER NUMBER	
		2877		
		MAIL DATE		DELIVERY MODE
		07/08/2008		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/562,683	HERSHTIK, JOHANAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	GORDON J. STOCK JR	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 December 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-6 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 28 December 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Specification and Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 1 in Fig. 1.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Figures 9, 10a, and 10b should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The abstract is objected to for the following: the abstract exceeds 150 words and the material following ‘element arrays’ on line 14 should be cancelled: the material being (Fig. 4) 1 cage unit ... 33 egg collection conveyer. Corrections required.
4. The specification is objected to for the following: on page 5 line 27 ‘11‘ should read - 11a-; on page 6 ‘12 and 13’ of line 1 should read -12a and 13a-; on page 6 ‘R’ of line 2 should read –R1 and R2-; on page 6 ‘11,’ ‘12’, and ‘13’ on lines 3, 7, 9-12 should read -11a, 12a, and 13a-; on page line 9 ‘lihgt’ should read -light-; on page 9 lines 10, 13-15, and 18 ‘12’ and ‘13’ should read -12a and 13a-; on page 8 lines 11-12 ‘11, 12, 13’ should read -11a, 12a, 13a-. Corrections required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. **Claims 1-6** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Claim 1** recites the limitation "the reflected infrared light" in line 15. There is insufficient antecedent basis for this limitation in the claim. **Claims 2-6** are rejected for depending from a rejected base claim.

In addition, **claim 1** recites ‘control means’ on line 7. ‘Control means’ is indefinite, for it is unclear what constitutes means since the specification only mentions ‘control means’ (see

applicant's disclosure: page 5, line 17; page 6, lines 4, 13, and 26; and page 7, line 7). **Claims 2-6** are rejected for depending from a rejected base claim.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 1-6** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Okano et al. (JP 2003-346124)** in view of **Kniskern et al. (4,868,901)**.

As for **claim 1**, Okano in a device for counting moving articles discloses the following: (Fig. 11: 100) comprising: a first light emitting element array and a second light emitting element array (Fig. 8: 11); a light receiving element array that is provided between said first and second light emitting element arrays (Fig. 8: 21 and 22 to the left); said first and second light emitting element arrays and said light receiving element array being arranged such that the light emitted from each of the light emitting elements in the array is reflected on the surface of the egg that is passing just under the light receiving element array, and then the reflected light is received by the light receiving element array (Fig. 8: 11, 21, 22, E, T with Fig. 4: T, E, 11, 21, 22);: a control means for processing the light reflected on the respective eggs and received by the light receiving element array and said control means being intended to measure the light intensity of the reflected light, detect the peak values of the light intensity, and count the egg on the basis of

the two peak values of the light intensities with respect to first and second light emitting element arrays (Fig. 8: 11, 21, 22 with Fig. 6 and Fig. 11: 130, 131, 132, 110).

As for reflected infrared light or using infrared light emitting element arrays, Okano does not explicitly state this; however, Kniskern in a reflected light detecting apparatus teaches using infrared light emitters (col. 13, lines 38-45). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to have infrared emitters and therefore reflected infrared light in order to count eggs without interference from background visible light.

As for **claim 2**, Okano in view of Kniskern discloses everything as above (see **claim 1**).

In addition, Okano discloses the light emitting element arrays comprise a plurality of light emitting elements (Fig. 8: 11 with Fig. 4: 11 and Fig. 11: 11: 10a).

As for **claim 3**, Okano in view of Kniskern discloses everything as above (see **claim 2**).

In addition, in view of Kniskern each of said light emitting elements comprises an infrared light emitter (Kniskern: col. 13, lines 38-45).

As for **claim 4**, Okano in view of Kniskern discloses everything as above (see **claim 1**).

In addition, Okano discloses the light emitting arrays and light receiving element array extend across a width of the egg collection conveyor (Fig. 4: T; 11, 21, 22).

As for **claim 5**, Okano in view of Kniskern discloses everything as above (see **claim 1**).

In addition, Okano suggests the first and second light element arrays alternately and sequentially emit light (Fig. 8: 11 of left and right with Fig. 11: 120 and 10a).

As for **claim 6**, Okano in view of Kniskern discloses everything as above (see **claim 1**).

In addition, Okano discloses control means counts the egg when two peak values with respect to the reflected light emitted from the first and second light emitting elements arrays are

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continuously detected (Fig. 8: right and left: 21 and 22 with Fig. 6 and Fig. 8: 110, 130, 131, 132).

### ***Fax/Telephone Numbers***

If the applicant wishes to send a fax dealing with either a proposed amendment or a discussion with a phone interview, then the fax should:

- 1) Contain either a statement “DRAFT” or “PROPOSED AMENDMENT” on the fax cover sheet; and
- 2) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

*Papers related to the application may be submitted to Group 2800 by Fax transmission. Papers should be faxed to Group 2800 via the PTO Fax machine located in Crystal Plaza 4. The form of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Machine number is: (571) 273-8300*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon J. Stock whose telephone number is (571) 272-2431.

The examiner can normally be reached on Monday-Friday, 8:00 a.m. - 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr., can be reached at 571-272-2800 ext 77.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Gordon J Stock/

Primary Examiner, Art Unit 2877

July 2, 2008